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15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 ARTHUR ELLERD AND JOSE
TROCONIS, on his own behalf and
19 others similarly situated,

20 Plaintiff,

21 v.

22 COUNTY OF LOS ANGELES, a
California Municipality,

23 Defendant.
24
25
26
27
28

Case No. 2:08-cv-04289-CAS-FFMx

The Hon. Christina A. Snyder

**[PROPOSED] JOINT STIPULATED
PROTECTIVE ORDER**

Note Changes Made By Court.

[FAC Filed: February 2, 2009]

1 Plaintiffs Arthur Ellerd ("Plaintiff Ellerd") and Jose Troconis
2 (collectively, "Plaintiffs") on the one hand, and Defendant County of Los Angeles,
3 on the other hand ("Defendant"), by and through their respective counsel, hereby
4 stipulate to the following protective order, which shall be effective immediately
5 upon signature by both parties:

6
7 1. PURPOSES AND LIMITATIONS

8 Disclosure and discovery activity in this action will likely involve
9 production of confidential, sensitive, proprietary, or private information for which
10 special protection from public disclosure and from use for any purpose other than
11 litigating this matter would be warranted. It is the parties' intention that these
12 documents not be disclosed to any person, including any plaintiff in this action.
13 Notwithstanding the foregoing such documents may be disclosed to Plaintiff Ellerd,
14 provided Plaintiff Ellerd expressly agrees to abide by the terms and restrictions of
15 this protective order by signing an "Agreement to be Bound by Protective Order
16 (Exhibit A). Accordingly, the parties hereby stipulate to and petition the Court to
17 enter the following Stipulated Protective Order.

18
19 2. DEFINITIONS

20 2.1 Party: Defendant to this action, including all of its officers,
21 directors, employees, consultants, retained experts, and outside counsel (and their
22 support staff), Plaintiff Ellerd, provided he expressly agrees to abide by the terms of
23 this protective order by signing an "Agreement to be Bound by Protective Order"
24 (Exhibit A) and, in so doing, agrees not to disclose Protected Material (as defined
25 below) to any other person or entity, and Plaintiff's counsel, their employees,
26 consultants, and retained experts who have expressly agreed to abide by the terms of
27 this protective order by signing Exhibit A, and, in so doing, agree not to disclose
28 Protected Material (as defined below) to any other person or entity.

1 2.2 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner generated, stored, or maintained (including,
3 among other things, documents, electronic data, testimony, transcripts, or tangible
4 things) that are produced or generated in disclosures or responses to discovery in
5 this matter.

6
7 2.3 Confidential Information or Items: information (regardless of
8 how generated, stored or maintained) or tangible things that (a) reveal confidential,
9 sensitive, and/or proprietary information regarding Defendant which disclose to
10 another non-party would create a substantial risk of serious injury that could not be
11 avoided by less restrictive means; or (b) reveal personal and/or confidential
12 information about Plaintiffs or any third party, including such types of information
13 as are protected by the California constitutional right of privacy.

14
15 2.4 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17
18 2.5 Producing Party: a Party or non-party that produces Disclosure
19 or Discovery Material in this action.

20
21 2.6 Designating Party: a Party or non-party that designates
22 information or items that it produces in disclosures or in responses to discovery as
23 Confidential Information or Items.

24
25 2.7 Privileged Material: all items or information, or portions of items
26 or information, regardless of the medium or manner generated, stored, or
27 maintained, including, among other things, testimony, transcripts, or tangible things,
28

1 that are subject the attorney-client privilege and/or the attorney work product
2 doctrine.

3
4 2.8 Protected Material: any Disclosure or Discovery Material that
5 constitutes Confidential Information or Items. As set forth in Paragraph 5.2, the
6 documents, information, items or materials that are subject to the protective order
7 shall be affixed with a label that describes the protected content in a meaningful
8 fashion—i.e., "CONFIDENTIAL - compensation plans," or " CONFIDENTIAL -
9 training material."

10
11 2.9 Outside Counsel: attorneys who are not employees of a Party
12 but who are retained to represent or advise a Party in this action (as well as their
13 internal support staffs).

14
15 2.10 House Counsel: attorneys who are employees of a Party (as well
16 as their internal support staffs).

17
18 2.11 Counsel (without qualifier): Outside Counsel and House
19 Counsel (as well as their support staffs).

20
21 2.12 Expert: a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its counsel to
23 serve as an expert witness or as a consultant in this action. This definition includes
24 a professional jury or trial consultant retained in connection with this litigation.

25
26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
28 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)

1 and their employees and subcontractors.

2
3 3. SCOPE

4 The protections conferred by this Stipulation and Order extend not only
5 to Protected Material (as defined above), and Confidential Information or Items, but
6 also any information copied or extracted therefrom, as well as all copies, excerpts,
7 summaries, or compilations thereof, plus **deposition** testimony, ~~conversations, or~~
8 ~~presentations by parties or counsel to or in court or in other settings that might~~
9 ~~reveal that contains~~ Protected Material, and Confidential Information or Items.

10 (FFM)

11
12 All Court orders will be presumptively available to the public. If a
13 Party files evidence under seal pursuant to Paragraph 10 of this Stipulation, all
14 papers that refer to or rely upon such evidence shall designate the particular aspects
15 that are confidential. This will enable the Court, in drafting orders, to determine
16 whether there is evidence which the Court should attempt not to disclose. Absent
17 such advance notification, the Court will be free to incorporate all such evidence in
18 its written and oral rulings.

19
20 In the event that the case proceeds to trial, all of the information filed
21 with the Court that was designated as Protected Material and/or Confidential
22 Information and Items becomes public and will be presumptively available to all
23 members of the public, unless sufficient cause is shown in advance of trial to
24 proceed otherwise.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality
3 obligations imposed by this Order shall remain in effect until a Designating Party
4 agrees otherwise in writing or a court order otherwise directs.

5
6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for
8 Protection. Each Party or non-party that designates information or items for
9 protection under this Order must take care to limit any such designation to specific
10 material that qualifies under the appropriate standards. If it comes to a Party's or a
11 non-party's attention that information or items that it designated for protection was
12 done so inadvertently, that Party or non-party must promptly notify all other parties
13 that it is withdrawing the mistaken designation.

14
15 5.2 Manner and Timing of Designations. Except as otherwise
16 provided in this Order (*see, e.g.*, section 2.8 above and second paragraph of
17 section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies
18 for protection under this Order must be clearly so designated before the material is
19 disclosed or produced.

20
21 Designation in conformity with this Order requires:

22
23 a. for information in documentary form (apart from transcripts of
24 depositions or other pretrial or trial proceedings (FFM)), that the Producing Party
25 affix the legend "CONFIDENTIAL" and a meaningful description of the type of
26 information being protected (i.e., "CONFIDENTIAL – compensation plan" or
27 "CONFIDENTIAL – training material") by use of a watermark, or a label at the top,
28 bottom or right margin of each page that contains protected material or,

1 alternatively, on the first page of a multipage document, if the entire document is
 2 protected. If only a portion or portions of the material on a page qualifies for
 3 protection, the Producing Party should endeavor to identify the protected portion, as
 4 described above, if such dissection of the document can be reasonably achieved
 5 without undue burden on the Designating Party.

6
 7 A Party or non-party that makes original documents or materials
 8 available for inspection need not designate them for protection until after the
 9 inspecting Party has indicated which material it would like copied and produced.
 10 During the inspection and before the designation, all of the material made available
 11 for inspection shall be deemed Confidential Information or Items. After the
 12 inspecting Party has identified the documents it wants copied and produced, the
 13 Producing Party must determine which documents, or portions thereof, qualify for
 14 protection under this Order, then, before producing the specified documents, the
 15 Producing Party must affix the legend "CONFIDENTIAL" and a meaning
 16 description of the information protected by way of a watermark, or a label at the top,
 17 bottom or right margin of each page that contains Protected Material, and
 18 Confidential Information and Items. If only a portion or portions of the material on
 19 a page qualifies for protection, the Producing Party also should endeavor to identify
 20 the protected portion(s) (*e.g.*, by making appropriate markings in the margins), if
 21 such dissection of the document can be reasonably achieved without undue burden
 22 on the Designating Party.

23
 24 b. for testimony given in deposition or in other pretrial or trial
 25 proceedings (FFM), that the Party or non-party offering or sponsoring, or giving the
 26 testimony identify on the record, before the close of the deposition, ~~hearing, or other~~
 27 ~~proceeding~~ (FFM), all protected testimony, and further specify any portions of the
 28 testimony that qualify as Confidential Information or Items. When it is impractical

1 to identify separately each portion of testimony that is entitled to protection, and
2 when it appears that substantial portions of the testimony may qualify for protection,
3 the party or non-party that sponsors, offers, or gives the testimony reserves the right,
4 during the time allocated for the witness to review and execute the deposition
5 transcript, to identify the specific portions of the testimony as Confidential
6 Information or Items.

7
8 Transcript pages containing Protected Material and Confidential
9 Information and Items must be separately bound by the court reporter, who must
10 affix to the top of each such page the legend "CONFIDENTIAL" and a meaningful
11 description of the type information protected, as instructed by the Party or nonparty
12 offering or sponsoring the witness or presenting the testimony.

13
14 c. for information produced in some form other than documentary,
15 and for any other tangible items, that the Producing Party affix in a prominent place
16 on the exterior of the container or containers in which the information or item is
17 stored the legend "CONFIDENTIAL" and a meaningful description of the type of
18 information being protected. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also should identify the protected
20 portion(s) (*e.g.*, by making appropriate markings in the margins), if such dissection
21 of the document can be reasonably achieved without undue burden on the
22 Designating Party.

23
24 5.3 Inadvertent Failures to Designate. If timely corrected, an
25 inadvertent failure to designate qualified information or items as Confidential
26 Information or Items does not, standing alone, waive the Designating Party's right to
27 secure protection under this Order for such material. If material is appropriately
28 designated as Confidential Information or Items after the material was initially

1 produced, the Receiving Party, on timely notification of the designation, must make
2 reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4
5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Challenges. In the event of a dispute regarding the designation
7 of confidential information, the procedure for obtaining a decision from the Court is
8 set forth in Local Rule 37. If the Parties wish to file the Joint Statement required by
9 Local Rule 37 under seal, they must also file an application to do so pursuant to
10 Local Rule 79 setting forth the reasons why the Joint Stipulation or portions thereof
11 should be filed under seal. Until the Court rules on the challenge, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation.

14
15 6.2 Timing of Challenges. Unless a prompt challenge to a
16 Designating Party's confidentiality designation is necessary to avoid foreseeable
17 substantial unfairness, unnecessary economic burdens, or a later significant
18 disruption or delay of the litigation, a Party does not waive its right to challenge a
19 confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed, so long as the Party exercised reasonable diligence
21 in doing so.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL AND
24 CONFIDENTIAL INFORMATION AND ITEMS

25 7.1 Basic Principles. A Receiving Party may use Protected Material
26 and Confidential Information or Items that is disclosed or produced by another Party
27 or by a non-party in connection with this case only for prosecuting, defending, or
28 attempting to settle this litigation. Such Protected Material and Confidential

1 Information and Items may be disclosed only to the categories of persons and under
2 the conditions described in this Order. When the litigation has been terminated, a
3 Receiving Party must comply with the provisions of section 11, below (FINAL
4 DISPOSITION).

5
6 Protected Material and Confidential Information or Items must be
7 stored and maintained by a Receiving Party at a location and in a secure manner that
8 ensures that access is limited to the persons authorized under this Order.

9
10 7.2 Disclosure of Confidential Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose, after having given reasonable written notice to
13 Designating Party, any information or item designated as Confidential Information
14 or Items only to:

15
16 7.2.1 the Receiving Party's Counsel in this action;

17
18 7.2.2 the officers, directors, and employees of the Receiving
19 Party to whom disclosure is reasonably necessary for this litigation;

20
21 7.2.3 experts (as defined in this Order) of the Receiving Party to
22 whom disclosure is reasonably necessary for this litigation and who have signed the
23 "Agreement to Be Bound by Protective Order" (Exhibit A);

24
25 7.2.4 the Court and its personnel;

26
27 7.2.5 court reporters, their staffs, and professional vendors to
28 whom disclosure is reasonably necessary for this litigation;

1 7.2.6 during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the "Agreement to Be
3 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony
4 or exhibits to depositions that reveal Protected Material and Confidential
5 Information and Items must be separately bound by the court reporter and may not
6 be disclosed to anyone except as permitted under this Stipulated Protective Order; or
7

8 7.2.7 the author of the document or the original source of the
9 information.
10

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

13 If a Receiving Party is served with a subpoena or an order issued in
14 other litigation that would compel disclosure of any information or items designated
15 in this action as Confidential Information or Items, the Receiving Party must so
16 notify the Designating Party, in writing (by fax, if possible) immediately and in no
17 event more than three court days after receiving the subpoena or order. Such
18 notification must include a copy of the subpoena or court order.
19

20 The Receiving Party also must immediately inform in writing the party
21 who caused the subpoena or order to issue in the other litigation that some or all the
22 material covered by the subpoena or order is the subject of this Protective Order. In
23 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
24 promptly to the party in the other action that caused the subpoena or order to issue.
25

26 The purpose of imposing these duties is to alert the interested parties to
27 the existence of this Protective Order and to afford the Designating Party in this case
28 an opportunity to try to protect its confidentiality interests in the court from which

1 the subpoena or order issued. The Designating Party shall bear the burdens and the
2 expenses of seeking protection in that court of its confidential material and nothing
3 in these provisions should be construed as authorizing or encouraging a Receiving
4 Party in this action to disobey a lawful directive from another court.

5
6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
7 AND CONFIDENTIAL INFORMATION AND ITEMS

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material and Confidential Information and Items to any person
10 or in any circumstance not authorized under this Stipulated Protective Order, the
11 Receiving Party must immediately (a) notify in writing the Designating Party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
13 Protected Material and Confidential Information and Items, (c) inform the person or
14 persons to whom unauthorized disclosures were made of all the terms of this Order,
15 and (d) request such person or persons to execute the "Acknowledgment and
16 Agreement to Be Bound" that is attached hereto as Exhibit A.

17
18 10. FILING PROTECTED MATERIAL AND CONFIDENTIAL
19 INFORMATION AND ITEMS

20 Prior to filing Protected Material and Confidential Information and
21 Items in the public records, the moving Party shall seek to file the Protected
22 Material and Confidential Information and Items under seal. If a Party seeks to file
23 Protected Material and Confidential Information and Items under seal, it shall
24 comply with Local Rule 79. Any such application must be made to the particular
25 judge considering the matter to which the proposed under seal filing pertains, and
26 must make an individualized and particular showing of good cause or compelling
27 need, depending on the context.

1 11. PRIVILEGED MATERIAL

2 The parties shall be permitted but not obligated to review materials for
3 privilege and/or work product protection prior to producing them in this matter.
4 Nothing in this Stipulated Protective Order compels a Party to produce Privileged
5 Material protected by the attorney-client privilege or attorney work product
6 doctrine, and no Party entering into this Stipulated Protective Order waives its right
7 to assert objections based on the attorney-client privilege or attorney work product
8 doctrine, and refrain from producing such Privileged Material, unless such
9 production is agreed to by the Parties or ordered by the Court.

10
11 If a Producing Party discovers that it has produced Privileged Material,
12 it may notify the Receiving Party, which will promptly destroy or return all copies
13 of such Privileged Material. Furthermore, if the Receiving Party has already
14 disclosed the Privileged Materials prior to receiving this notice, the Receiving Party
15 must take reasonable steps to retrieve the materials or ensure their destruction.
16 Unless otherwise agreed by the parties in writing, no party shall be permitted to
17 retain Privileged Materials after receiving notification under this section, even if the
18 parties dispute the privilege and/or work product status of the materials. If the
19 parties subsequently agree or the Court orders that such materials should be
20 disclosed, the Producing Party will produce new copies of the materials.

21
22 12. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party,
24 within sixty (60) days after the final termination of this action, each Receiving Party
25 must return all Protected Material and Confidential Information and Items to the
26 Producing Party. As used in this subdivision, "all Protected Material" includes all
27 copies, abstracts, compilations, summaries or any other form of reproducing or
28 capturing any of the Protected Material and Confidential Information and Items.

1 With permission in writing from the Designating Party, the Receiving Party may
2 destroy some or all of the Protected Material and Confidential Information and
3 Items instead of returning it. Whether the Protected Material and Confidential
4 Information and Items is returned or destroyed, the Receiving Party must submit a
5 written certification to the Producing Party (and, if not the same person or entity, to
6 the Designating Party) by the sixty-day (60) deadline that identifies (by category,
7 where appropriate) all the Protected Material and Confidential Information and
8 Items that was returned or destroyed and that affirms that the Receiving Party has
9 not retained any copies, abstracts, compilations, summaries or other forms of
10 reproducing or capturing any of the Protected Material and Confidential Information
11 and Items. Notwithstanding this provision, Counsel are entitled to retain an archival
12 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence
13 or attorney work product, even if such materials contain Protected Material and
14 Confidential Information and Items. Any such archival copies that contain or
15 constitute Protected Material and Confidential Information and Items remain subject
16 to this Protective Order as set forth in Section 4 (DURATION), above.

17
18 13. MISCELLANEOUS

19 13.1 Right to Further Relief. Nothing in this Order abridges the right
20 of any person to seek its modification by mutual agreement of the Parties or the
21 Court in the future. No modification made by the Parties shall have the force or
22 effect of a Court order unless the Court approves the modification.

23
24 13.2 Right to Assert Other Objections. By stipulating to the entry of
25 this Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order.

EXHIBIT A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARTHUR ELLERD AND JOSE
TROCONIS, on his own behalf and
others similarly situated,

Plaintiff,

v.

COUNTY OF LOS ANGELES, a
California Municipality,

Defendant.

Case No. CV-04289-CAS-FFMX

CLASS ACTION

The Hon. Christina A. Snyder

**Agreement to Be Bound by Protective
Order**

By signing this document, I hereby certify that I have read the Protective Order ("Order") in the above-captioned case. I understand the responsibilities and obligations the Order imposes on persons viewing the material encompassed by the Order, and I agree to be bound by all of the provisions of the Order, so as to enable me to view the material encompassed by the Order. I understand that any violation of the Order by me or anyone acting under my direction may subject me to penalties for contempt of Court and/or other relief sought by a party to the above-captioned matter. I hereby consent to the personal and subject matter jurisdiction over me by the Court for purposes of enforcing my agreement here.

Dated:

Signature

Name (Printed)